

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.9 of 1986

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1. Smt.Shakuntala Singh, Wife of Sri Rameshwar Prasad Singh.
 2. Sri Rameshwar Prasad Singh, Son of Ramautar Prasad Chaudhary.
Both residents of Mohalla-Kathalbari, Khanjarpur, Police Station- Barari,
Disttict-Bhagalpur--- (Defendants 1st party)
 3. Mostt. Kalabati Devi, Wife of deceased Nandalal Bhagat.
 4. Dayanand Bhagat.
 5. Adityanand Saini Mali.
Sons of deceased Nand Lal Bhagat.
All residents of Mohalla-Naya Gauan, Police Station-Jamalpur, District-
Monghye(Defendants 2nd party)
- Appellant/s

Versus

1. Smt.Kishni Devi, Wife of Sri Prashottam Tibriwal, Resident of Village-
Mahgama, Police Station-Mahgama, District- Santhal Parganas.
2. Bindo Kumar Dhandhanian, Son of Late Kashi Ram Dhandhanian, resident of
Mohalla-Patel Babu Road, Bhagalpur.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. S.S.Dwivedi, Sr.Adv. with
Mr. Gopal Prasad Roy, Adv.

For the Respondent/s: Mr. T.N.Matin,Sr.Adv.with
Mr. Ramadhar Singh,Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT


Date: 17.10.2012.

The defendants in T.S. No. 68 of 1980 of the court of Additional District Judge II, Bhagalpur are the appellants in this appeal assailing the judgment and decree dated 18th October 1985 by which the said suit has been decreed declaring the title of the plaintiff over the suit property and holding her entitled to the recovery of possession of the same from the defendant-1st set.

The broad essential facts of the case of the plaintiff are this:-



Mulchand Ram Kishorpuria was the recorded owner of 2 Bighas and 5 Kathas of homestead land of Holding No. 58 (old), 39 (new) in Moti Kochwan Lane, Ward No. 1, Circle No. 2 of Bhagalpur Municipality. His adopted son Bansidhar Kishorpuria executed a registered sale deed dated 23.12.1935 transferring the said property to Sri Paliram Singhania, who came in possession after the purchase and got his name mutated in the records of Bhagalpur Municipality as well as in the records of the ex-landlord for the purchased properties. The plaintiff Kishni Devi is one of the two daughters of Paliram Singhania. Paliram Singhania transferred some of the properties of his share (not the suit properties), allotted to him in partition with his son, to his two daughters by the registered deed of gift dated 03.03.1958 and put the donees in possession. Paliram Singhania died on 18.03.1958 leaving behind four sons and two daughter as his heirs, and thereafter a partition, by way of family arrangement, was done among the four sons on 16.02.1961 wherein the 2 Bighas and 5 Kathas of homestead land, commonly known as 'Bagicha' (Garden), was allotted jointly to the share of only three sons. Immediately thereafter, the said three sons exchanged the said homestead land and 'Bagicha', allotted to their share, with the property gifted to the two sisters. The two sisters, namely, Kishni Devi, and Shanti Devi thus acquired exclusive title over the homestead land and Bagicha, got their names mutated in municipal registers with regard to the same,



paid rent and obtained rent receipts. The plaintiff, later on, amicably partitioned the said property with her sister and in that partition the eastern block of half of the homestead land and Bagicha came to the share of the plaintiff and other half i.e. western block was allotted to the share of her sister. A map was also prepared showing the division of shares between the two sisters and an agreement to this effect was also executed on 01.08.1970 between them. The plaintiff thereafter sold portions of her allotted half share to different persons who have been coming in possession of their purchased land, after making constructions and getting their names mutated in the municipality as well as the Anchal Office of the State of Bihar and only 10 katha of the land, after the said transfers, has remained with the plaintiff which is the suit land. The sister of the plaintiff had also sold away her entire share and the purchasers are in possession after constructing their respective house over the same.

The defendant no. 4 Dayanand Bhagat, however, filed appeal against the mutation order in favour of the plaintiff wherein he claimed himself to be Nati (daughter's son) of Ram Phal Bhagat Mali and further claimed that Mulchand Ram Marwari had, by oral gift, given the entire land i.e. 2 Bigha 10 kathas to Ramphal Bhagat Mali as he had installed an idol of the 'Sheetla' on the said land. However, the appeal was dismissed finding the plaintiff in possession of the suit land and thereafter the revision of the defendant no. 4 was also


dismissed. The defendant no. 4 also got initiated proceedings under 144 Cr.P.C. raising dispute over the suit land.

Thereafter, the defendant second party, claiming themselves to be the heirs of Ramphal Bhagat Mali, executed a registered sale deed on 30.06.1976 in favour of the defendant No. 1 with regard to the suit property who made attempt to take possession over the same which led to a proceeding under Section 144 Cr.P.C. In the municipal survey records of right, the name of the defendant 1st set was however collusively entered by the survey authorities and the plaintiff's objection was rejected but the plaintiff has challenged the order in appeal. Similarly, the order of mutation in favour of defendant 1st set has been challenged by the plaintiff in the appeal.

The plaintiff, thus, has claimed exclusive title over the suit land and denied the right, title and interest of the defendants over the suit land and filed the suit for declaration of her title and for declaration that the defendant 1st set have not acquired any title over the suit land on the basis of the sale deed dated 30.06.1976 executed by the defendant 2nd set. The relief for confirmation of possession or in the alternative for recovery of possession has also been sought for.

The defendant 1st set and defendant 2nd set have filed joint written statement, denying the assertions and claim of the plaintiff, by mainly pleading the following facts:

Mulchand Ram was the original owner of Holding No. 58



(old), 39 (new), Moti Kochwan Lane, Bhagalpur. The entire plot of land measuring 2 Bigha 5 katha originally belonged to Budhan Paswan and others who sold 2 Bigha and 1 katha to Mulchand Ram by a registered sale deed dated 20th December 1913. Thereafter, Mulchand Ram got his name mutated in the Bhagalpur Municipality and the said mutation continued up till 1939-40.

Mulchand Ram dedicated the said land to 'Shitala Asthan' with Ramphal Bhagat Mali in occupation of the same for performing Puja etc.. Ramphal Bhagat Mali had continued in possession of the entire land and became absolute owner of the same by the law of prescription and adverse possession. After the death of Ramphal Bhagat Mali, the defendant 2nd set, who are his heirs, have continued in possession over the same on the basis of inheritance. The adoption by Mulchand Ram of Bansidhar Kishorpuria as his son has been specifically denied with further denial that Mulchand Ram had no name as Mulchand Ram Kishorpuria. In this manner, the acquisition of title over the said land by Paliram Singhania, the father of the plaintiff, through purchase by sale deed dated 23.12.1935 from Bansidhar Kishorpuria, has been denied asserting that Bansidhar Kishorpuria had no title over the properties of Mulchand Ram, and consequently the right, title and interest of the plaintiff over the suit land have also been denied. The defendants have asserted that the defendant no. 1 has purchased the suit land by registered sale deed

dated 30th June 1976 from the defendant 2nd set and has come in possession over the same as owner thereof.

In view of the rival pleadings of the parties, the learned court below has framed altogether eleven issues out of which issue nos. 5, 6, 7, 8, 9 and 10 which were the material issues are as follows:-

Issue no. 5:- Whether Mulchand Ram Kishorpuria and Mulchand Ram Marwari are one and the same man or they are two different persons?

Issue no. 6:- Is the story of adoption of Banshidhar Kishorpuria by Sri Mulchand Ram Kishorpuria as claimed by the plaintiff correct?

Issue no. 7:- Is the sale deed dated 23.12.35 executed by Banshidhar Kishorpuria in favour of Paliram Singhania in respect of 2 Bigha 5 dhur of homestead land bearing Holding No. 58 (old) 39 (new) of Moti Kochwan Lane in Mohalla Khanjarpur of the town of Bhagalpur a valid document and was acted upon?

Issue no. 8:- Had Ramphal Mali acquired any right, title or possession over 2 bighas and odd land?

Issue no. 9:- Whether Smt. Shakuntala Singh the defendant no. 1, acquired any right, title or interest over the suit land by virtue of the sale deed dated 30.06.76?

Issue no. 10:- Has the plaintiff got any subsisting title to


the suit land and is the plaintiff entitled for the decree of confirmation of possession or in the alternative for the recovery of possession of the suit land as claimed by her?.

After hearing the parties and scrutinizing their pleadings and evidence, the learned court below has come to the finding that Mulchand Ram Marwari and Mulchand Ram Kishorpuria was one and the same person. It has further been found that Mulchand Ram Kishorpuria had adopted Bansidhar Kishorpuria as his son and accordingly issue nos. 5 and 6 were decided in favour of the plaintiff. The learned court below has further come to the conclusion that the sale deed dated 23.12.1935 in favour of Paliram Singhanian was a legally valid document and had been fully acted upon and accordingly issue no. 7 has also been decided in favour of the plaintiff. It has been finally held that Ramphal Bhagat Mali did not acquire right, title or interest over 2 Bigha and odd Kathas of land and consequently the defendant no. 1 also has not acquired right, title and interest over the suit land on the basis of her purchase through the sale deed dated 30th June 1976. On the basis of these findings, the learned court below has decreed the suit declaring the title of the plaintiff over the suit land and further holding her entitled to recovery of possession over the same from the defendant 1st set. The plaintiff has also been found entitled to mesne profits to be determined later.

Heard Mr. S.S. Dwivedi, the learned senior counsel


appearing on behalf of the appellants and Mr. T.N. Matin, the learned senior counsel appearing on behalf of the plaintiff-respondent.

The assail of Mr. S.S. Dwivedi, the learned senior counsel, to the impugned judgment and decree is two fold. Firstly, he has challenged the finding of adoption of Banshidhar Kishorpuria by Mulchand Ram. It has been urged that there is total absence of the necessary pleading in the plaint with regard to the case of adoption and even otherwise also there is no evidence to substantiate the case of adoption which can be established by necessarily proving that the ceremony of 'giving and taking' of the child had been performed. It has further been pointed out that even the circumstances, as unfolded by the evidence on record, also are not in consonance with the story of adoption of Banshidhar Kishorpuria by Mulchand Ram. Elaborating his submissions, the learned senior counsel has contended that there is no evidence to establish that Mulchand Ram was ever described as Mulchand Ram Kishorpuria anywhere and further, Mulchand Ram acquired title over only 2 Bigha 1 katha of land from Budhan Paswan and another by purchase but the sale deed executed by his alleged adopted son Banshidhar Kishorpuria mentions the transfer of altogether 2 Bigha 5 Katha of land which fact itself shows that Banshidhar Kishorpuria was not even acquainted with the real facts, when normally a truly adopted son would have known the correct facts. It has been pointed out that entries of the names of Paliram



Singhanian as well as Mulchand Ram Marwari in the municipal records are also suspicious in nature as no order of mutation has been produced on behalf of the plaintiff to substantiate the same. Further, it has been contended that there is admittedly no document of adoption and the oldest of the witnesses of the parties, who has been examined as D.W.-1, is no other than Purohit of Mulchand Ram but he has also not supported the story of adoption as pleaded by the plaintiff.

It has been next contended by the learned senior counsel for the appellants that Mulchand Ram had dedicated his purchased 2 Bigha 1 katha of land to 'Shitla Asthan', with Ramphal Bhagat Mali to perform Puja etc. and placed him in possession of the property. After the death of Ramphal Bhagat Mali, it has been submitted, his heirs who are the defendant 2nd set in the suit, inherited the property and continued in possession of the same. It has thus been urged that although no proof of dedication by Mulchandram is available but still it is a case of lost grant and therefore, the defendant 2nd set had acquired valid title over the property including the suit property by prescription. It has been urged that the learned court below has also found the defendants in possession over the suit land but has not considered that the defendants have perfected their title over the suit property by adverse possession. It has further been pointed that the dispute with regard to possession started only in the year 1970-71 for the first time and prior to that there was no dispute and the defendant




2nd set continued in peaceful possession over the dedicated properties. It has been canvassed that the defendant 2nd set were well within their rights to transfer the suit land in favour of the defendant no. 1 by registered sale deed conveying valid title and possession over the suit land to her. Finally, it has been argued that the learned court below has misconstrued and misinterpreted the evidence on record and has passed the impugned judgment on the basis of misconception of law and facts and as such, the impugned judgment and decree are not fit to be sustained.

Per contra, Mr. T.N. Matin, the learned senior counsel appearing on behalf of the plaintiff-respondent, has submitted that there is no foundation at all for the claim of the defendant 2nd set of acquisition of title by adverse possession over the suit land. It has been submitted that in view of the statements in the written statement, it is manifest that the initial entry of Ramphal Bhagat Mali over the suit land was a legal entry as Pujari or Caretaker, and he and his successor-in-interest have been continuing in possession over the suit land as such with the permission of the admitted owner Mulchand Ram. It has thus been urged that the basic ingredient of adverse possession i.e. 'animus possidendi, is completely absent as the defendants have failed to state as to how and when Ramphal Bhagat Mali or his successors have started claiming their hostile title over the suit land. It has been contended that the suit is governed by Article 65

of the Limitation Act by which the plaintiff has only to establish his/her title over the suit land and the defendants can defeat the claim of the plaintiff for recovery of possession only when they establish that their possession over the suit land has become adverse to the plaintiff for more than the prescribed period.

It has been further submitted by the learned senior counsel that from the facts of the case it transpires that Mulchand Ram Marwari died in the year 1923-24 and therefore the adoption of Banshidhar Kishorpuria must be assumed to have taken place long back. It has been urged that in all such cases of old/ancient adoption, the burden of proof is not so strict, as actual evidence of “giving and taking” of the boy in adoption, in all probability stand wiped out by the passage of time. It has, therefore, been canvassed that in such cases if the adoption has been accepted in the normal course by the family members and relatives then the strict proof of ‘giving and taking’ is dispensed with. It has been pointed out that the close family members including the cousin of Bansidhar Kishorpuria has come before the court in support of the adoption of Banshidhar Kishorpuria by Mulchand Ram and therefore absence of the evidence of ‘giving and taking, could not be very material. It has further been urged by the learned senior counsel that the execution of the sale deed in the year 1935 by Bansidhar Kishorpuria and thereafter dealing of the purchased properties in partition and exchange by the family members



of the purchaser Paliram Singhanian are sufficient to suggest that the adoption had in fact taken place and recognized. Elaborating his submissions, the learned counsel has pointed out that even the kinsmen of Mulchand Ram have supported in their deposition that Mulchand Ram was also known as Mulchand Ram Kishorpuria and he had adopted Bansidhar Kishorpuria as his son. It has been thus argued that the learned court below has not committed any error of law and fact and the impugned judgment and decree require no interference.

The learned counsels for the parties have also relied upon a number of decisions which shall be referred to appropriately later on.

In view of the rival contentions of the parties, the following points emerge for determination in this appeal:

- (i) Whether the plaintiff has succeeded in establishing her title over the suit property on the basis of the sale deed dated 23.12.1935 by proving that the vendor Bansidhar Kishorpuria was the adopted son of the admitted owner Mulchand Ram who was also known as Mulchand Ram Kishorpuria or Mulchand Ram Marwari?
- (ii) Whether the defendants have succeeded in establishing their case of acquisition of title by adverse possession over the suit property?
- (iii) Whether the impugned judgment and decree by the

learned court below are sustainable in law as well as on facts?

Point No.I:- There is no dispute between the parties that the suit property originally belonged to Mulchand Ram but the discord between the parties is that Mulchand Ram was a different person than Mulchand Ram Kishorpuria. Further, the plaintiff's case is that Mulchand Ram Kishorpuria adopted Bansidhar Kishorpuria as his son and subsequently Bandishar Kishorpuria by registered sale deed dated 23.12.1935 sold the 2 ¼ Bighas of homestead land alongwith trees standing over the same which he had inherited after the death of Mulchand Ram to Paliram Singhanian who undisputedly was the father of the plaintiff. In this manner the plaintiff has claimed that the suit property has been acquired by her father and later on the plaintiff acquired title over the same through exchange with her brothers and thereafter by partition with her sister. To the contrary the specific case of the contesting defendants is that Bansidhar Kishorpuria was never adopted by Mulchand Ram as his son and thus he never acquired any right, title or possession over the suit property by inheritance from Mulchand Ram.

The learned senior counsel on behalf of the defendant has laid emphasis that in order to establish valid adoption, the proof of actual "giving and taking" of the person being adopted is essential and heavy burden lies on the person who propounds the adoption to prove

this fact. It has been urged that in absence of proof of this fact, the case of adoption cannot be accepted by other evidence howsoever enormous the same may be. Strong reliance has been placed by the learned senior counsel on the following decisions of the Apex Court in support of this contention;


- (i) AIR 1961 SC 1378 [Lakshman Singh Kothari Vs. Smt. Rup Kanwar.]
- (ii) AIR 1983 SC 114 [Madhusudan Das Vs. Smt. Narayani Bai & Ors.]
- (iii) AIR1987 SC 962 [Rahasa Pandiani Vs. Gokulananda Panda.]

The learned senior counsel appearing on behalf of the respondent on the other hand has contended that there is no dispute regarding the proposition that the proof of actual “giving and taking” is essential to establish the fact of adoption but in old cases of adoption where direct evidence to the fact of “giving and taking” is difficult to be found, the said principle regarding proof is not strictly applicable. Learned senior counsel has further canvassed that the decree of proof of the fact of adoption also varies in cases where the adoption is being challenged by a family member and where it is challenged by a stranger to the family. In the later case where old adoption is challenged by a stranger, the initial burden is not so heavy on the person asserting adoption and is discharged by leading some

evidence suggesting the fact of adoption and thereafter the burden shifts to the stranger to establish that no adoption has taken place. Learned senior counsel has placed reliance upon the following decisions in support of his propositions.


- (i) AIR 1970 SC 1286 [Debi Prasad Vs. Smt. Tribeni Devi & Ors.]
- (ii) AIR 1969 SC 1359 [Ramarao Vs. K. Bhaskarar.]
- (iii) AIR 1964 Orissa 117 [Balinki Padhano & Anr. Vs. Gopalkrishna Padhano & Ors.]
- (iv) AIR 1976 Rajasthan 40 [Moti Lal & Ors. Vs. Sardar Mal & Ors.]

In the case of Laxman Singh (supra) their lordships have considered the law of adoption vis-à-vis the ceremony of “giving and taking” and, after taking notice of the treatise on Hindu law, have held that “under the Hindu Law, whether among regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of ‘giving and taking’. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive.” In the case of Madhusudan Das(Supra),




their Lordships have reiterated the principle that “ for a valid adoption, the physical act of giving and taking is an essential requisite, a ceremony imperative in all adoptions whatever the caste. And this requisite is satisfied in its essence only by the actual delivery and acceptance of the boy, even though there exists expression of consent or an executed deed of adoption”. In the case of Rahasa Pandiani (Supra), their Lordships have observed that in a case where the adoption is not supported by any registered document, the Court has to act with a great deal of caution and circumspection keeping in mind that a claim of spurious adoption is not less frequent than concocting a spurious will and thus the matter has to be approached cautiously keeping in mind suspicious circumstances.

From the above postulates, it is clear that a fact of adoption will have to be proved by necessarily leading evidence of the ceremony of “giving and taking” and the Court will have to carefully scrutinize the evidence adduced to establish an adoption. However, in none of the above decisions, the issue regarding an ancient or old adoption was involved where direct evidence to the fact of adoption was difficult to be found. This aspect came to be considered by the Hon’ble Supreme Court in the case of Devi Prasad (supra), relied upon on behalf of the respondent, where the adoption which was under challenge had been alleged to have taken place 54 years earlier to the institution of the suit. Their Lordships, after considering the




facts and circumstances and also after taking notice of the decision in Lakshman Singh's case (Supra) as well as other decisions, have laid down that in cases of ancient adoption, every allowance for the absence of evidence to prove the fact of ceremony of 'giving and taking' is to be favourably entertained, and the fact of long recognition of the person as an adopted son, in the case of a Hindu, will raise a strong presumption in favour of the validity of his adoption. Their Lordships have observed that "in the case of all ancient transactions, it is but natural that the positive oral evidence will be lacking. The passage of time gradually wipes out such evidence. In the case of an adoption, said to have taken place years before the same is questioned, the most important evidence is likely to be that the alleged adoptive father held out the person claiming to have been adopted as his son; the latter treated the former as his father and their relations and friends treated them as father and son." Similar view has been expressed in earlier decision in the case of Ramarao (supra) where their Lordships have quoted with approval the passage from Mulla's Hindu Law, 13th Ed., Art. 512 Page 519, as follows:-

".... But when there is a lapse of 55 years between the adoption and its being questioned every allowance for the absence of evidence to prove such fact must be favourably entertained. It stands to reason that after a very long term of years, and a variety of transactions of open life and conduct upon the footing that the adoption was a valid act the burden must rest heavily upon him who challenges its validity.



Besides the abovesaid Apex Court decisions, the learned counsel for the respondent has also relied upon the division bench Judgment of Orissa High Court in Balinki's case (supra) where also the controversy was with regard to ancient adoption of 1905 and the natural father and the adoptive father were both dead, and there was no eye witness to prove the actual evidence of "giving and taking" and there was also no deed of adoption. Their Lordships have, however, held that in cases of ancient adoption, the actual evidence of "giving and taking" may not be available and if there is sufficient evidence to show that for a long time, the boy was treated as the adopted son at a time when there was no controversy, the burden will shift on the other side to show that the adoption did not take place. Similar is the view taken by Rajasthan High Court in Motilal's Case (Supra) where after making reference to a number of authorities, it has been held that in cases of old adoption, if the party alleging adoption adduces some evidence of the factum of adoption, it may be regarded as sufficient, to shift the burden on the other side, to prove that the adoption did not take place and it has been further observed that in such cases of old adoption, a presumption in favour of the validity of adoption is naturally drawn from the status of the adopted son in the adopting family and its recognition by the members of the family for a number of years.



From the conspectus of the principles, settled by the aforesaid decisions relied upon by both the sides, it is discernible that the evidence of ceremony of “giving and taking” is essential for establishing the adoption but this is not strictly required in cases of old adoption where it may not be possible to find out direct evidence of the ceremony of “giving and taking”. In such old cases, where there is no registered deed of adoption and direct evidence to the ceremony of “giving and taking” may not be forthcoming due to passage of time, insistence on the evidence of “giving and taking” should not be made in order to establish adoption, and the evidence of the family members and relatives suggesting that the boy has been treated and recognized as adopted son since long, can be sufficient to raise a presumption in favour of the validity of the adoption and to shift the burden on the other side. As a necessary corollary, it also emerges that different considerations will arise when the adoption is challenged by a family member and in cases where such adoption is challenged by a stranger to the family. Thus, there is no force in the submission of the learned senior counsel for the appellant that in absence of evidence of “giving and taking” or any other direct evidence of the factum of adoption, the plaintiff’s case that Bansidhar Kishorpuria had been adopted by Mulchand Ram cannot be accepted.

Now the evidence led by the parties with regard to the adoption need to be examined. The plaintiff has adduced oral

evidence in support of the case of adoption and the learned senior counsel on behalf of the plaintiff-respondent has relied upon the depositions of P.W.6, P.W.7, P.W.11, P.W.12, P.W.14 and P.W.15.

P.W.6 Sita Ram Kishorpuria has in his deposition given a genealogy of the family of Mulchand Ram from which it appears that he is nephew of Mulchand Ram and cousin (brother) of Banshidhar Kishorpuria. He has stated that his grand father's name was Ramchandra Kishorpuria who had one brother whose name was Bansi Ram, and Mulchand Ram was the son of Bansi Ram. He has further stated that Banshidhar Kishorpuria was son of Janki Das who was brother of this witness's father. He has also stated that Mulchand Ram was married in Mamadia family but no son was born to him from his wife and he adopted Bansidhar Son of Janki Das. He has also deposed that his family members belong to village Kishorpuria in Rajasthan and therefore they also use the title as Kishorpuria. He has stated that Mulchand Ram was also known as Kishorpuria.


This witness, who had also been a member of Bihar Legislative Assembly, belongs to the family of Mulchand Ram and closely related with him and also with Bansidhar Kishorpuria who is his cousin. As such he is a competent witness on the issue of adoption. He has accepted that Bansidhar Kishorpuria was adopted by Mulchand Ram as his son, and has also disclosed that his family members bear the title Kishorpuria and Mulchand Ram was also

known as Mulchand Ram Kishorpuria.

P.W.11 is Shyam Lal Mamadia. He has stated in his deposition that Mulchand Ram was his Phupha(husband of his father's sister). He has further stated that title of Mulchand Ram was Kishorpuria and he had adopted Bansidhar Kishorpuria as son. He has also deposed that after the death of Mulchand Ram, his entire property was inherited by Bansidhar Kishorpuria. This witness is also a close relative of Mulchand Ram and thus a competent witness to depose on the factum of adoption.


P.W.-7 Mohan Lal, in his deposition, has stated that he was earlier tenant of Bansidhar Kishorpuria. He has deposed that the father's name of Bandishar Kishorpuria was Mulchand Ram Kishorpuria who adopted Bansidhar as his son. He has also stated that the name of the mother of Bansidhar was Laxmi Devi who died 15 years ago. He has further stated that Mulchand Ram belonged to Kishorpuria family.

P.W.12 is Sitaram Singhanian who is son of Paliram Singhanian and is brother of the plaintiff. He has supported the case of the plaintiff that Mulchand Ram belonged to Kishorpuria family and he had no son and he adopted Bansidhar Kishorpuria who was son of Janki Babu. He has further stated that his father Paliram Singhanian had purchased a Bagicha with an area of about 2 bigha and 5 katha containing fruit bearing trees, in the year 1935.




P.W.15 Bansidhar Kishorpuria has, in his deposition, stated that he was adopted at the age of two years by Mulchand Ram. It is worth nothing that he has deposed in the year 1983 and his age has been assessed by the court to be 70 years and as such the adoption in question must have taken place in the year 1915. This witness has accepted to have sold the suit properties which he inherited from his adoptive father Mulchand Ram, to Paliram Singhanian. He has also expressed no concern with the properties of his natural father Janki Das. He has also disclosed that his mother's name was Laxmi Devi (Mulchand Ram's wife) who died 15-16 years ago.

The aforesaid witnesses of the plaintiff, particularly P.W.6 and P.W.11, are close relatives of Mulchand Ram and they have accepted that Bansidhar Kishorpuria had been adopted as son by Mulchand Ram. It also transpires from the depositions of these witnesses that Mulchand Ram's wife was Laxmi Devi and they had also a daughter, namely, Ginia Devi. These witnesses have also disclosed that the family members of Mulchand Ram also bear the title Kishorpuria and in this regard the depositions of the P.W.6, who is the nephew of Mulchand Ram, as per the genealogy disclosed from his deposition, and the deposition of the P.W.11, have direct bearing on the issue. The acceptance of the fact of adoption of Bansidhar Kishorpuria by Mulchand Ram, in his deposition by P.W.6, also assumes significance as P.W.6 Sitaram Kishorpuria would have a



chance to succeed to the property of Mulchand Ram being his nephew in absence of the adoption in question. Thus it is evident that Bansidhar Kishorpuria has been accepted as adopted son of Mulchand Ram by the family members and relatives of Mulchand Ram as well as by closely associated persons who have further disclosed that the members of the family of Mulchand Ram also bear title Kishorepuria.

The defendant-appellants have led oral evidence to deny the case of the adoption of Bansidhar Kishorpuria by Mulchand Ram but none of the witnesses of the defendants are family members or relatives of Mulchand Ram or a closely associated person. However emphasis in this regard has been placed on behalf of the appellants on the deposition of D.W.1 and D.W.2 who have claimed to be Purohit and barber respectively of Mulchand Ram. The D.W.-1 Bhola Nath Chakravorty has stated that Mulchand Ram had no son or daughter and he had not adopted any son. He has however denied knowledge of the village where Mulchand Ram had been married. Moreover, there is nothing in his deposition to suggest that this witness has knowledge of the family of Mulchand Ram. His statements do not inspire confidence and are not worth to discredit the above mentioned witnesses of the plaintiff. The D.W.-2 Gulcharan Thakur has claimed himself to be the barber of Mulchand Ram but he has stated to have no knowledge of the location of the house of Mulchand Ram or regarding the year of his death. From the tenor of his deposition this



witness appears to be a tutored witness. The other witnesses of the defendants, though also have stated that Mulchand Ram was issueless and had not adopted Bansidhar Kishorepuria as his son but there is no statement that Mulchand Ram was survived by no relative or family member including his uncles and their sons, and the depositions of his relative and family member as the plaintiff's witnesses have been collusively and falsely made. There is also no evidence that the adoption in question was ever challenged by the family members of Mulchand Ram including his wife Laxmi Devi or daughter Ginia Devi.

From the documentary evidence also, the glaring facts emerge that in the year 1935 Bansidhar Kishorpuria sold the entire 2 ¼ Bighas of land, which admittedly belonged to Mulchand Ram, by a registered sale deed dated 23.12.1935 to Paliram Singhanian. After the purchase, Paliram Singhanian got his name entered in the demand register of the Bhagalpur Municipality on the said basis which fact is borne out from Ext.9 and Ext.9/A which are the copies of the demand register of Bhagalpur Municipality for the suit land. From Ext. 9-A, it appears that by order dated 12.09.1939, the name of the assessee was changed from Mulchand Ram to Paliram Singhanian. Ext. 9 is the demand register of the year 1958-59 with the name of Paliram Singhanian as the assessee. It is not the case of the contesting defendants that these entries were ever objected or challenged by any

of the family members of Mulchand Ram or by the predecessor of the defendants.

Thus from the evidence as discussed above, there is no scintilla of doubt left that the plaintiff has succeeded in establishing the factum of adoption of Bansidhar Kishorpuria by Mulchand Ram as his son, and also the fact that Mulchand Ram was also known as Mulchand Ram Kishorpuria. This point is accordingly decided in favour of the plaintiff-respondents.

Point No.II and III:-The suit has been filed by the plaintiff for possession on the basis of title over the suit properties. The plaintiff has claimed that her father Paliram Singhanian had purchased 2 ¼ Bighas of homestead land from Bansidhar Kishorpuria by registered sale deed dated 22.12.1935(Ext.2/C). The contesting defendants have resisted the claim of the plaintiff and have set up the case of acquisition of title over the suit property by adverse possession.

In order to evaluate the claim of the defendants, on the basis of adverse possession, it would be pertinent to take into notice the pleadings made in the written statement. It transpires from the written statement that the defendants have stated that Mulchand Ram had dedicated his property including the suit property to the Deity 'Shitla Sthan' and assigned the work of performing Puja and religious rites to Ramphal Bhagal Mali. There is no pleading by the contesting

defendants that Mulchand Ram had ever given his land to Ramphal Bhagat Mali who was admittedly his Mali (gardener). The relevant passages from the written statement read as follows:-

Paragraph-7(ii):-“.....Kebala No.7 dated 19.12.1935 produced by the plaintiff is obviously manipulated document brought into light with the dishonest motive of grabbing the land of Late Mulchand Ram which he had already dedicated to “Shitla Sthan” with Mali Ramphal Bhagat in occupation of the same for performing Puja etc...”


Paragraph 10:-“.... The real fact indirectly described in this paragraph is that the entire land measuring 2 Bighas and odd kathas was dedicated by the heirless Mool Chan Ram to “Shitla Sthan” with Ramphal Bhagat Mali for performing Puja and other religious rites etc. Ramphal Bhagat Mali continued in uninterrupted physical possession of the property for more than 50 years and there was no whisper of any claimant or the existence of any adopted son during the entire period. Ramphal Bhagal Mali started living there with his family members as an absolute 16 annas owner and he established a temple of “Shitla Maa” over the land.....”

Paragraph 11:-“.... The defendant 2nd parties were the occupancy raiyats of the land in question by virtue of their uninterrupted continued physical possession and utility since more than several twelve years. They had full right, title and the same had

been perfected by law of prescription and adverse possession as well....”

From the aforementioned averments in the written statement of the contesting defendants, the fact unmistakably appears that Mulchand Ram made the dedication in favour of ‘Shitla Sthan’ and appointed/assigned Ramphal Bhagat Mali as its care taker or Pujari Therefore, even after accepting the case of dedication by Mool Chand Ram to be true, it is the “Shitla Sthan” who would be the title holder on the basis of the dedication and not Ramphal Bhagat Mali who was only in permissible possession. The defendants have not disclosed the name and description of the person against whom they asserted their hostile title over the land including the suit land and thereby acquired title by adverse possession. The defendants have also not specified in the written statement, the period or the year from which Ramphal Bhagat Mali or his descendants changed their status from being care taker or Pujari of “Shitla Sthan” and started exercising their hostile possession.

It is not in dispute that the defendant second party (defendant no.3 to 5) are the successors of Ramphal Bhagat Mali and the defendant no.4 Dayanand Bhagat has been examined as D.W.19 in the suit. He has stated in his deposition that Mulchand Ram after purchasing 2 Bigha 1 katha land including the suit land in the year 1913 had established Shitla Temple over the same. He has further




stated in paragraph 8, firstly, that his Nana (Ramphal Bhagat) and his family members lived over the suit land for the purpose of performing Puja of “Shitla” but, in the next breath, he has stated that they had been residing there in the capacity of owner. Further in his deposition in paragraph 5, he has stated that Mulchand Ram has given his land to his Nana by oral gift 50-60 years ago. Obviously, the defendant no.4 has made statements in his deposition which are beyond his pleadings where no claim on the basis of oral gift has been made. It also appears that he has been trying to conceal the real fact and make out a new case beyond his pleading.

The different facet of law of adverse possession has, by now, been well settled. It would be pertinent here firstly to mention the observation of the Apex Court in the case of Dr.Mahesh Chand Sharma Vs. Smt. Raj Kumari Sharma & Ors. AIR 1996 SC 869 which is as follows:-


“...We may emphasize that a person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession...”

In the case of Md. Mohammad Ali Vs. Jagdish Kalita & Ors 2004(1) SCC 271, their Lordships have held that by reason of the Limitation Act 1963, the legal position as was obtaining under the old Act underwent a change, and in a suit governed by Article 65 of the



Limitation Act 1963, the plaintiff will succeed if he proves his title without proving his possession within 12 years preceding the filing of the suit, and the defendant in order to defeat the plaintiff's claim would have to establish his title by adverse possession. Their Lordships have further also laid down that long and continuous possession by itself would not constitute adverse possession. Again, the requirements of a defendant to succeed in a suit on the basis of his claim of adverse possession have been enumerated by the Apex Court in the case of Karnataka Board of Wakf Vs. Government of India, 2004(3)PLJR (SC) 245 wherein it has been laid down that a person who claims adverse possession will have to show (a) on what date he came in possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed.

From the statements made in the written statement, it becomes manifest that the possession of Ramphal Bhagat Mali, the predecessor of the defendant 2nd set over the suit property was of a caretaker or Pujari of "Shitla Sthan" or "Shitla Temple". There is no statement that Mulchand Ram, the original owner ever made any grant or gift to Ramphal Bhagat Mali, of his land including of suit land. But the contesting defendants have given a go-bye to that status and come out with a case of acquisition of title over the suit land by adverse



possession only on the basis of their long possession without disclosing as to whether they have been prescribing their hostile title against “Shitla Sthan” or against the successor-in-interest of Mulchand Ram. Even on the basis of their pleadings, the defendants at the utmost could have acquired title by adverse possession only against “Shitla Sthan” to whom, the properties according to their case, was dedicated but that is not their case. Thus the possession of defendants over the suit land is nothing more than gratuitous possession or permissible possession. The Hon’ble Supreme Court in the case of A.Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Ors., 2012(6)SCC 430 has considered the claim of a watchman or caretaker on the property on the basis of adverse possession and it has been held as follows:-


“...The watchman, care taker or a servant employed to look after the property can never acquire any interest in the property irrespective of his long possession. The watchman, care taker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, the courts are not justified in protecting the possession of a watchman, care taker or servant who was only allowed to live into the premises to look after the same.....”

It has been further held:

“...The watchman, care taker or agent holds the property of the

principal only on behalf of the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession....”

The learned senior counsel on behalf of the appellants has submitted that admittedly Ramphal Bhagat and his descendants are in possession over the suit property and therefore on the basis of doctrine of lost grant, their title by adverse possession can be upheld. The reliance in this regard has been placed upon the decision of the Apex Court in the case of State of W.B.Vs. Dalhozi Institute Society A.I.R. 1970 S.C. 1778. There is no dispute on the principle as laid down by their Lordships that if a person is in open, continuous and uninterrupted possession over a property claiming it on the basis of a grant which he has failed to establish or which has been found to be invalid, his acquisition of title over that property by adverse possession can be declared. But the distinguishing feature in the present case is that there is no claim in the pleading regarding the transfer of title by the original owner Mulchand Ram in favour of Ramphal Bhagal Mali by grant or otherwise, and all that has been pleaded is that Mool Chan Ram dedicated the property to “Shitla Sthan” with Ramphal Bhagat Mali to perform Puja and other religious rituals. As such, there is no substance in this submission on behalf of the appellant and the above principle laid down by their lordships is not applicable to the facts of this case.




On behalf of the appellant, the reliance has also been placed upon the decision of the Apex Court in Rame Gowda Vs. M Varedapa Nairo, 2004(1)SCC 769, and on that basis it has been submitted that the defendants' possession must be protected on the basis of presumption that a person in possession has good title against all the word but the rightful owner. However it appears that the principle of law which has been laid down in this decision is in an entirely different setting of facts where their Lordships were considering the right of a trespasser to be in possession until dispossessed through the process of law. In the present case the contesting defendants have not claimed themselves to be in possession without any right rather their pleadings disclose them to be in possession of the 2 Bigha and odd land which includes the suit land with the permission of the real owner.

At this juncture, it is pertinent to take into notice the recitals made in the sale deed (Ext. D) executed by the defendant 2nd set in favour of the defendant no. 1. The recitals read as follows:-


“चुं सम्पत्ति खाना 5 की जमीन में एक स्थान श्री श्री 108 श्री शितला माता का स्थान बहुत पूर्वजों से चला आ रहा है । उक्त स्थान के भगत पुजेरी स्व० श्री रामफल भगत माली थे वो उनके जीवित अवस्था में ही श्री मूलचन्द राम मारवाडी को कुछ मनोरथ सिद्ध श्री मा शीतला जी की कृपा से हुई । इस पर श्री मूलचन्द राम मारवाडी ने भगत जी श्री रामफल भगत माली को अपने हार्दिक हृदय से तनमन की स्वस्थता तथा स्थिर बुद्धि की अवस्था में मवाजी 10 कट्ठा जमीन जो स्थान श्री शितला माता के लगा हुआ है। मौखिक दान पत्र दिये वो तब से स्व० रामफल भगत माली इस दान दिये हुए रकबा को अपने मसरफ में लाते रहे ।

The aforesaid statements by the defendant 2nd party in the



registered sale deed present an entirely different and inconsistent case of origin of title of Rampal Bhagat Mali over only 10 katha land of Mulchand Ram than that made out in the written statement where the case of dedication or grant of his entire 2 bigha 1 katha of land which included 10 katha suit land by Mulchand Ram to 'Shitla Sthan' with Rampal Bhagat Mali as pujari has been made out. No explanation has been furnished by the contesting defendants. Further, the witnesses of the defendants including the defendant no. 4, in their depositions, have accepted the existence of houses of different persons in the 2 bigha and odd land which fact is more in consonance with the case of the plaintiff that she and her sister have sold away the entire 2 bigha 5 katha of land except the suit land and the purchasers are in possession by constructing their houses. There is no pleading by the defendants that they have sold other parts of the 2 bigha 1 katha, which they have claimed by way of adverse possession, to other persons, and there is also no explanation to the possession of other persons over the remaining area other than the suit land. The aforesaid discrepancies in the pleading and evidence of the contesting defendants are sufficient to jettison their case altogether as it becomes plain and patent that the case set up by the defendants is not true at all.

For the foregoing reasons, the conclusion is inescapable that the defendant 2nd set have not acquired any title over the suit property on the basis of adverse possession and the defendant no. 1



Smt. Shakuntala Devi has also not acquired any right, title and interest over the suit land on the basis of her purchase by the sale deed dated 30.6.1976 executed by the defendant 2nd set in her favour. The learned court below has carefully scrutinized the evidence of the parties and has correctly reached to the conclusions which are in accordance with law. Therefore no interference is required in the impugned judgment and decree.

For the abovesaid reasons and discussions, it is held that there is no merit in this appeal, which is, accordingly, dismissed. The impugned judgment and order passed by the learned court below is upheld. In the facts and circumstances of the case, there shall be no order as to costs.

(V. Nath, J)

Devendra/-